

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	]	
	]	
v.	]	No. 05-CR-30042-MLW
	]	
CESAR CRUZ and	]	
RICARDO DIAZ	]	

**GOVERNMENT'S REVISED, ASSENTED-TO**  
**MOTION TO CONTINUE TRIAL DATE**

The United States, through undersigned counsel, hereby moves to continue the trial date currently set in this case, which is September 5, 2006. In support of this motion the government states the following:

1. Trial was originally set for May 1, 2006. At the final pretrial conference on April 26, 2006, however, the Court continued the trial date in light of the number of unresolved issues and the Court's schedule for the coming weeks.
2. The Court set a new trial date of September 5, 2006. At that time counsel for the government noted that September 5 was the first day of kindergarten for his oldest child and suggested setting a different date. The Court kept the September 5 date, but was not unmindful of counsel's concerns, saying that counsel should "ask [the Court] again" at a later date.
3. By motion of May 3, 2006, the government moved to continue the trial date from September 5, 2006, to September 25. On May 22, 2006, the Court denied this motion without prejudice, stating that "there appears no good reason to start the trial later than Sept. 11, 2006 at the latest."

4. The government now renews its motion to move the trial date to September 25 or later, for the following reasons:
- (a) As stated in the government's original motion, the government's cooperating witness is testifying in another trial starting September 5, 2006, creating a conflict with the current trial date.<sup>1</sup> The AUSA assigned to that matter guesses that it will last about one week.
  - (b) Moreover, the government's witness is also scheduled to testify in another trial – starting the following Monday, September 11, 2006 – and that matter is also expected to last approximately a week.<sup>2</sup> (Counsel was unaware of this latter trial when the original motion to continue was filed.)
  - (c) As stated in the government's original motion, September 5 is the first day of kindergarten for lead counsel's oldest child, an event counsel would very much like to attend. If the Court does grant the continuance, counsel probably would be absent from work for two days during the week of September 5.
  - (d) Defense counsel assent to the motion.

WHEREFORE, the United States respectfully renews its request that the September 5 trial date be continued to September 25, 2006, or some later date. Counsel continues to suggest the 25<sup>th</sup> because (a) it is two weeks following the start of the second trial described above, better ensuring no overlap with trial in the instant case, and (b) the government needs time to prepare its cooperating witness for the instant case, which will be difficult in light of his/her participation

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<sup>1</sup> That case is *United States v. Justan Carter*, No. 05-CR-30070-WGY.

<sup>2</sup> That case is *United States v. David Vaddy*, No. 05-CR-30031-RGS.

in three trials in one month.

Should the Court grant this motion, the government also respectfully requests an accompanying order excluding the additional time.

Respectfully submitted,

Michael J. Sullivan  
United States Attorney

By: /s/: Andrew E. Lelling  
ANDREW E. LELLING  
Sharron A. Kearney  
Assistant U.S. Attorneys

Date: May 23, 2006

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on May 23, 2006.

/s/: Andrew E. Lelling  
ANDREW E. LELLING